

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

:

Case No. 2:11-cv-1016

District Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to all Plaintiffs.

**AGREED ORDER TO PARTIALLY STAY
PROCEEDINGS**

This consolidated capital § 1983 case is before the Court on Defendants' Motions to Dismiss the Amended Individual Supplemental Complaints of seventy-nine plaintiffs in this case (ECF Nos. 2847 through 2892, 2894 through 2926). The Court ordered the parties to meet and confer as to issues concerning oral argument on the Motions to Dismiss, potential consolidation for adjudication of the Motions, and the possibility of a stay of all other matters in the consolidated case pending adjudication of the Motions to Dismiss.

Having so conferred, the parties have jointly agreed to the following stay of proceedings in this matter, which the Court **ADOPTS**, as follows:

1. All proceedings in this matter are stayed, including, but not limited to, discovery, motions for preliminary injunction, and motions for other relief, except for the following:

- a. All motions to dismiss pending as of the date of this Order;
 - i. Defendants shall file their reply memoranda in support of the pending motions to dismiss no later than August 4, 2020;
 - b. The parties' ongoing obligation to timely supplement discovery responses;
 - c. The parties' ability to issue Rule 45 subpoenas; and
 - d. Defendants' ongoing obligation to provide discovery concerning any new execution protocol.
2. The stay of proceedings shall remain in effect until the earlier of:
 - a. Defendants' 120-day notice to Plaintiffs and the Court of the Defendants' intent to carry out an execution on the scheduled date;
 - b. Defendants' adoption of a new execution protocol; or
 - c. The Court's final decisions on all the motions to dismiss.
3. The Court will conduct an oral hearing on the motions to dismiss on August 20, 2020, commencing at 9:30 A.M. Given the current state of the COVID 19 pandemic, the Court will conduct the hearing using GoToMeeting¹ remote video technology. Counsel will be given specific connecting instructions prior to the hearing date. At the hearing no more than two counsel designated by the Plaintiffs and no more than two counsel for the Defendants may present arguments concerning the law and facts relevant to the motions. Counsel representing specific Plaintiffs who require additional and separate argument

¹ This is the technology which has been used by the Court for remote access for criminal proceedings during the Pandemic court closing. It should be familiar to counsel from the Federal Defender's Office. If it is not also familiar to the Attorney General's Office, they should contact Kelly Kopf.

on specific and unique issues beyond those arguments covered in the primary argument shall request such argument from the Court by motion demonstrating the reasons and subject of such additional arguments. Such motions shall be filed, responded to (if necessary) and ruled on prior to the date set for oral arguments.

4. No later than 120 days before the date of any currently scheduled execution of a Plaintiff, the Governor of Ohio will issue a reprieve postponing the date of the scheduled execution, or, in the alternative, the Defendants will by that date notify Plaintiffs and the Court that a reprieve will not issue and Defendants intend to carry out the scheduled execution on the scheduled date.

5. There is no agreement as to whether or how the Court should or should not consolidate adjudication of the motions to dismiss.

6. The parties will independently advise the Court's Courtroom Deputy, Kelly Kopf, as to whether they consent to Magistrate Judge jurisdiction for the limited purpose of adjudicating the currently pending motions to dismiss. Such limited consent would have no effect on the parties' prior notification to the Clerk as to their consent to Magistrate Judge jurisdiction. Defendants and each independent Plaintiff shall provide this notice on August 4, 2020.

July 13, 2020.

s/ Michael R. Merz
United States Magistrate Judge

